

**DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 00-0114P
INDIANA CORPORATE INCOME TAX
For Tax Year Ending 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Ten-Percent Negligence Penalty Assessed for Late Payment of Indiana Corporate Income Tax.

Authority: IC 6-8.1-10-2.1(a)(2); IC 6-8.1-10-2.1(a)(3); IC 6-8.1-10-2.1(b)(2), (4); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer protests the assessment of a 10% negligence penalty based upon the taxpayer's 1997 corporate income tax deficiency attributable, according to the taxpayer, to a computational error on the part of the taxpayer's outside tax consultants.

II. Ten-Percent Penalty Assessed for Underpayment of the Taxpayer's Quarterly Estimated Tax.

Authority: IC 6-3-4-4.1(e); IC 6-3-4-4.1(e)(1), (2); IC 6-8.1-10-2.1(b); 45 IAC 15-11-2(c).

Statement of Facts

The taxpayer is a mid-sized manufacturing enterprise in the business of producing cold drawn steel tubes. On December 27, 1999, the Department issued an AR-80 assessing a ten-percent negligence penalty based upon the taxpayer's failure to make complete payment of its 1997 Indiana Corporation Tax. On March 1, 2000, the Department issued an AR-80 assessing a ten-percent penalty stemming from the taxpayer's underpayment of its second quarterly estimated 1997 income tax. A portion of that penalty was attributable to the Department's failure to timely post the taxpayer's second quarterly payment. However, even after the Department's error was corrected, the taxpayer's second quarterly estimated tax payment was underpaid by approximately \$81,000.

DISCUSSION

I. Ten-Percent Negligence Penalty Assessed for Late Payment of Indiana Corporate Income Tax.

The taxpayer protests the assessment of a ten-percent negligence penalty for the late payment of the taxpayer's 1997 Indiana Corporate Income Tax. The taxpayer characterizes the late payment as the result of an "isolated computational error." The origins of the "isolated computational error" stemmed from the time the taxpayer received notice that its 1996 taxes had been overpaid. That overpayment was credited over to the taxpayer's first quarter 1997 estimated tax liability. The taxpayer subsequently made second, third, and fourth quarter estimated payments for the 1997 tax year. When the taxpayer, acting through its outside tax consultants, calculated its final 1997 tax liability, it inadvertently gave itself a duplicate credit for the 1996 overpayment. This cascading series of errors resulted in the underpayment of the taxpayer's 1997 tax in the amount of \$95,526. The taxpayer has since made complete payment of its 1997 tax liability.

Under IC 6-8.1-10-2.1(a)(2), a taxpayer is subject to a penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment." IC 6-8.1-10-2.1(a)(3), imposes on the taxpayer a penalty for "a deficiency that is due to negligence." The penalty is limited to ten-percent of the amount of the tax that was not timely remitted. IC 6-8.1-10-2.1(b)(2), (4). The standards under which negligence is determined and the penalty imposed is found at 45 IAC 15-11-2(b) which states that "[n]egligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to the duties placed upon the taxpayer by the Indiana Code or department regulations." The regulation goes on to state that the Department shall determine negligence "on a case by case basis according to the facts and circumstances of each taxpayer." Id.

The Department is authorized to waive the penalty "if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence." 45 IAC 15-11-2(c). The regulation provides a non-exclusive list of factors, which go toward establishing reasonable cause, but concludes that "[r]easonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. Id.

The "particular facts and circumstances" presented by the taxpayer lead to a conclusion that the late payment was due to "reasonable cause and not due to negligence." Taxpayer's late payment of its 1997 tax liability stemmed from its failure to properly account for the effect of the 1996 overpayment when the taxpayer calculated, in October of 1998, its final 1997 tax liability. The error is imbedded within the taxpayer's computation of its 1996 return, within the calculation of its 1997 return, and the erroneous crediting of the 1996 overpayment over the span of two tax years. When reviewed individually, both the 1996 and 1997 returns are facially correct. Evidence of the computation error can only be found in the work papers prepared by the taxpayer's outside tax consultants and, at least initially, unavailable when the taxpayer reviewed the 1997 returns. Standing alone none of the taxpayer's arguments – that it reasonably relied on the advice of its tax advisors, that it promptly remedied the deficiency when brought to its attention, that the

computation error was a transcription error – are dispositive but they are factors which are indicative of the taxpayer’s reasonable care, caution, or diligence.

FINDING

Taxpayer’s protest is sustained.

DISCUSSION

II. Ten-Percent Penalty Assessed for Underpayment of the Taxpayer’s Quarterly Estimated Tax.

Distinguished from the first issue concerning taxpayer’s 1997 income tax, is the protest the taxpayer sets forth regarding the penalty assessed for the underpayment of the taxpayer’s second quarter estimated 1997 corporation income tax. The taxpayer argues that an underpayment of its 1997 second quarter estimated tax in the amount of \$1,025 does not warrant the imposition of a civil penalty of \$8,076 and that, based on general equitable principles, the penalty should be abated.

Under IC 6-3-4-4.1(e), a penalty is imposed for the underpayment of estimated tax and incorporates by reference the ten-percent negligence rate under IC 6-8.1-10-2.1(b). IC 6-3-4-4.1(e) incorporates the ten-percent *rate* but does not incorporate the negligence standard. Rather, IC 6-3-4-4.1(e) simply states that the penalty “shall be assessed by the department on corporations failing to make payments as required”

Taxpayer mischaracterizes the basis upon which the \$8,076 penalty was determined. IC 6-3-4-4.1(e) assesses the ten-percent penalty on the amount by which the taxpayer underestimated its 1997 tax liability. In its 1997 second quarter estimated tax payment, taxpayer underestimated its liability by \$80,763 and it is this figure that served as the basis for determining the penalty.

In order to avoid the ten-percent penalty, taxpayer had the option of estimating its 1997 final tax liability to within 80% of its actual liability. IC 6-3-4-4.1(e)(1), (2). Alternatively, taxpayer could have based its estimate on its final tax liability for the previous year. *Id.* Taxpayer chose the former, miscalculated its 1997 income, and made a deficient payment of its estimated tax liability. In effect, taxpayer fell \$1,025 short of reaching the “safe harbor” provisions found under IC 6-3-4-4.1(e). However, as a basis for determining the resulting ten-percent penalty, the \$1,025 figure is entirely irrelevant. The miscalculation is unfortunate but results from the taxpayer’s reasoned, if erroneous, decision making. Having no equitable or statutory basis upon which to abate the ten-percent penalty, the Department must decline the opportunity to do so.

FINDING

Taxpayer’s protest is respectfully denied.